

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WENDELL SHANE MACKEY,

Plaintiff,

Case No. 2:17-cv-12359-BAF-DRG

v.

HON: BERNARD A. FRIEDMAN

JAMES MICHAEL BERRYMAN,
Mayor of the City of Adrian, Michigan;
MARGARET M.S. NOE, Judge of the
Lenawee County Circuit Court,

Defendants.

HADDAD LAW FIRM PLC
ISSA HADDAD (P71699)
Attorney for Plaintiff
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Bingham Farms, MI 48025-4550
(248) 633-8500

JOHNSON, ROSATI, SCHULTZ & JOPPICH P.C.
CHRISTOPHER J. JOHNSON (P32937)
Attorney for Defendant Margaret M.S. Noe
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DEFENDANT MARGARET NOE'S ANSWER TO
PLAINTIFF'S COMPLAINT, AFFIRMATIVE DEFENSES,
AND RELIANCE UPON JURY DEMAND

NOW COMES Defendant, the Honorable Margaret M.S. Noe, by and through her Attorneys, JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C. by CHRISTOPHER J. JOHNSON and in Answer to Plaintiff's Complaint, states as follows:

A. INTRODUCTION

1. This Defendant denies the allegation contained therein for the reason that it is untrue.

2. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

3. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant. To the extent that the allegation suggests participation by this Defendant, she denies the allegations contained therein.

4. This Defendant denies the allegation in the manner and form pleaded. This Defendant only acted in her capacity as a Lenawee County Circuit Court Judge and issued an Order on a Petition brought before her.

5. This Defendant neither admits nor denies the allegations that are directed to another Defendant and affirmatively denies that she violated any of Plaintiff's rights.

JURISDICTION

6. This Defendant neither admits nor denies the allegations contained therein for the reason that same are Plaintiff's statement of law and require no answer.

VENUE

7. This Defendant neither admits nor denies the allegations contained therein for the reason that same are Plaintiff's statement of law and require no answer.

PARTIES

8. Upon information and belief, this Defendant admits the allegation contained therein.

9. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

10. This Defendant admits that she is a sitting Lenawee County Circuit Court Judge and that she is sued in her official capacity. This Defendant denies the balance of the allegations contained therein.

COMMON ALLEGATIONS

B. ExposingAdrian.com

11. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

12. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

13. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

14. This Defendant neither admits nor denies the allegations, including sub-paragraphs (A) through (I) for the reason that she is without sufficient information to answer.

15. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

16. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

17. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

C. Letter to the Editor

18. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

19. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

20. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

21. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

D. The Exchange at the June 19, 2017 City Commission Meeting

22. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

23. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

24. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

25. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

26. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

27. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

28. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

29. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

30. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

31. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

32. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

33. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

34. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

35. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

36. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

37. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

E. Attempt to Jail Plaintiff for Political Criticism

38. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

39. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

40. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

41. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

42. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

43. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

F. The Exchange at the July 3, 2017 City Commission Meeting

44. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

45. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

46. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

47. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

48. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

49. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

50. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

51. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

G. The July 5, 2017 Electronic Mail to the City Attorney

52. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

53. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

54. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

55. This Defendant neither admits nor denies the allegations contained therein that are directed to another Defendant.

H. The July 6, 2017 Personal Protection Order

56. This Defendant admits that on July 6, 2017, Defendant Berryman filed a Petition for a Personal Protection Order seeking an Ex Parte Personal Protection Order and that the contents of the court file speaks for itself.

57. This Defendant denies the allegations in the manner and form pleaded and affirmatively states that the Petition speaks for itself.

58. This Defendant neither admits nor denies the allegations contained therein since they are directed to another Defendant.

59. This Defendant neither admits nor denies the allegations contained therein, including sub-paragraphs (A) through (G) for the reason that same are directed to another Defendant.

60. This Defendant admits that she entered a Personal Protection Order on July 7, 2017 and denies the balance of the allegations in the manner and form pleaded. This Defendant affirmative states that the Order itself notified Plaintiff that he could file a motion to modify or terminate the order as long as the motion was filed within fourteen (14) days after being served with the order.

61. This Defendant denies the allegation contained therein for the reason that it is untrue.

62. This Defendant denies the allegation in the manner and form pleaded. This Defendant affirmatively states that the Order speaks for itself.

63. This Defendant denies the allegation contained therein for the reason that it is untrue.

64. This Defendant denies the allegations in the manner and form pleaded. This Defendant affirmatively states that she relied upon the information contained in the Petition, only.

65. This Defendant denies the allegation contained therein for the reason that it is untrue.

66. This Defendant denies the allegations in the manner and form pleaded. This Defendant affirmatively states that in Michigan, a Personal Protection Order may be granted Ex Parte.

67. This Defendant denies the allegations in the manner and form pleaded. This Defendant affirmatively states that in Michigan, a Personal Protection Order may be granted Ex Parte.

68. This Defendant denies the allegations in the manner and form pleaded. This Defendant affirmatively states that in Michigan, a Personal Protection Order may be granted Ex Parte.

69. This Defendant denies the allegation contained therein for the reason that it is untrue.

70. This Defendant denies the allegation contained therein for the reason that it is untrue.

G.[SIC] The July 8, 2017 Electronic Mail to the City Attorney

71. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

72. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

73. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

H.[SIC] The July 18, 2017 NAACP Candidate's Forum

74. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

75. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

76. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

77. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

78. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

79. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

80. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

81. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

82. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

83. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

84. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

85. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

86. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

87. This Defendant neither admits nor denies the allegation for the reason that she is without sufficient information to answer.

88. This Defendant neither admits nor denies the allegations contained therein for the reason that same are directed to another Defendant.

LEGAL CLAIMS
COUNT I - ALLEGED VIOLATION OF 42 USC SECTION 1983
VIOLATION OF FIRST AMENDMENT - RETALIATION

89. Defendant repeats and realleges her answers to paragraphs 1 through 88 above as if more fully set forth herein and same are adopted by reference.

90. This Defendant admits that she was acting in her official capacity as a Circuit Court Judge acting under color of state law. She neither admits nor denies the balance of the allegation contained therein for the reason that it is directed toward another Defendant.

91. This Defendant neither admits nor denies the allegations for the reason that she is without sufficient information to answer.

92. This Defendant denies the allegations contained therein, including sub-paragraphs (A) through (M) for the reason that it is untrue.

93. This Defendant denies the allegation contained therein for the reason that it is untrue.

94. This Defendant denies the allegation contained therein for the reason that it is untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorney fees so wrongfully sustained.

COUNT II - ALLEGED VIOLATION OF 42 USC SECTION 1983
VIOLATION OF FOURTEENTH AMENDMENT
PROCEDURAL DUE PROCESS

95. Defendant repeats and realleges her answers to paragraphs 1 through 94 above as if more fully set forth herein and same are adopted by reference.

96. This Defendant admits that she was acting in her official capacity as a Circuit Court Judge acting under color of state law. She neither admits nor denies the balance of the allegation contained therein for the reason that it is directed toward another Defendant.

97. This Defendant denies the allegations in the manner and form pleaded. This Defendant affirmatively states that the State of Michigan has a process for issuing Personal Protection Orders including Orders that are issued Ex Parte. Additionally, this Defendant affirmatively states that on July 14, 2017, the Plaintiff filed a Motion to Set Aside the Personal Protection Order and that the hearing was scheduled for July 26, 2017. Unknown to this Defendant at the time, Plaintiff filed this action in Federal District Court on July 21, 2017 which was not served until the evening before the hearing, July 25, 2017. As a result of Plaintiff filing the litigation in Federal Court, she recused herself from hearing the matter on July 26, 2017. While Plaintiff asked the other Circuit Judge to hear the matter, that Circuit Judge also recused herself since this Defendant is the Chief Judge of the Circuit and has supervisory authority over the other Circuit Court Judge. As a

result of this lawsuit, the Michigan Supreme Court Administrator's Office will have to assign another Circuit Court Judge to the matter (which at the time of this writing is unknown) and delay in having the matter heard is the actions taken by the Plaintiff.

98. This Defendant denies the allegation contained therein for the reason that it is untrue.

99. This Defendant denies the allegation contained therein for the reason that it is untrue.

100. This Defendant denies the allegation contained therein for the reason that it is untrue.

101. This Defendant denies the allegation contained therein for the reason that it is untrue.

102. This Defendant denies the allegation contained therein for the reason that it is untrue.

103. This Defendant denies the allegation contained therein for the reason that it is untrue.

104. This Defendant denies the allegation contained therein for the reason that it is untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorney fees so wrongfully sustained.

COUNT III - ALLEGED VIOLATION OF 42 USC SECTION 1983
VIOLATION OF FOURTEENTH AMENDMENT
SUBSTANTIVE DUE PROCESS

105. Defendant repeats and realleges her answers to paragraphs 1 through 104 above as if more fully set forth herein and same are adopted by reference.

106. This Defendant admits that she was acting in her official capacity as a Circuit Court Judge acting under color of state law. She neither admits nor denies the balance of the allegation contained therein for the reason that it is directed toward another Defendant.

107. This Defendant neither admits nor denies the allegations contained therein for the reason that same are Plaintiff's statement of law and require no answer.

108. This Defendant denies the allegation contained therein for the reason that it is untrue.

109. This Defendant denies the allegation contained therein for the reason that it is untrue.

110. This Defendant denies the allegation contained therein for the reason that it is untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorney fees so wrongfully sustained.

COUNT IV - ALLEGED VIOLATION OF 42 USC SECTION 1983
VIOLATION OF FOURTEENTH AMENDMENT
EQUAL PROTECTION CLAUSE - CLASS OF ONE

111. Defendant repeats and realleges her answers to paragraphs 1 through 110 above as if more fully set forth herein and same are adopted by reference.

112. This Defendant admits that she was acting in her official capacity as a Circuit Court Judge acting under color of state law. She neither admits nor denies the balance of the allegation contained therein for the reason that it is directed toward another Defendant.

113. This Defendant denies the allegation contained therein for the reason that it is untrue.

114. This Defendant denies the allegation contained therein for the reason that it is untrue.

115. This Defendant denies the allegation contained therein for the reason that it is untrue.

116. This Defendant denies the allegation contained therein for the reason that it is untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorney fees so wrongfully sustained.

COUNT V - ALLEGED VIOLATION OF 42 USC 1985
CONSPIRACY TO VIOLATE CIVIL RIGHTS

117. Defendant repeats and realleges her answers to paragraphs 1 through 116 above as if more fully set forth herein and same are adopted by reference.

118. This Defendant denies the allegation contained therein for the reason that it is untrue.

119. This Defendant denies the allegation contained therein for the reason that it is untrue.

120. This Defendant denies the allegation contained therein for the reason that it is untrue.

121. This Defendant denies the allegation contained therein for the reason that it is untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorney fees so wrongfully sustained.

SUPPLEMENTARY STATE LAW CLAIMS

COUNT VI - ABUSE OF PROCESS

122. Defendant repeats and realleges her answers to paragraphs 1 through 121 above as if more fully set forth herein and same are adopted by reference.

123. This Defendant denies the allegation contained therein for the reason that it is untrue.

124. This Defendant denies the allegation contained therein for the reason that it is untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorney fees so wrongfully sustained.

COUNT VII - ALLEGED CIVIL CONSPIRACY

125. Defendant repeats and realleges her answers to paragraphs 1 through 124 above as if more fully set forth herein and same are adopted by reference.

126. This Defendant denies the allegation contained therein for the reason that it is untrue.

127. This Defendant denies the allegation contained therein for the reason that it is untrue.

128. This Defendant denies the allegation contained therein for the reason that it is untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorney fees so wrongfully sustained.

COUNT VIII - ALLEGED INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

129. Defendant repeats and realleges her answers to paragraphs 1 through 128 above as if more fully set forth herein and same are adopted by reference.

130. This Defendant denies the allegation contained therein for the reason that it is untrue.

131. This Defendant denies the allegation contained therein for the reason that it is untrue.

132. This Defendant denies the allegation contained therein for the reason that it is untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorney fees so wrongfully sustained.

Respectfully submitted,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

s/ Christopher J. Johnson

Attorney for Judge Margaret Noe
27555 Executive Drive, Ste. 250
Farmington Hills, MI 48331
(248) 489-4100

cjohnson@jrsjlaw.com
(P32937)

DATED: August 15, 2017

AFFIRMATIVE DEFENSES

NOW COMES Defendant, the Honorable Margaret M.S. Noe, by and through her Attorneys, JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C. by CHRISTOPHER J. JOHNSON and for her Affirmative Defenses, state as follows:

1. Plaintiff has failed to state a cause of action upon which relief may be granted.
2. This Defendant is entitled to absolute judicial immunity on the federal and state counts.
3. This Defendant is entitled to governmental immunity with respect to the state law counts.
4. Plaintiff has failed to take advantage of his state law remedies and with the filing of this complaint, actually delayed his state law remedies.
5. In the event that this Court finds that there is any federal question, the doctrine of abstention applies pending the resolution of this matter in state court.
6. Plaintiff's conduct is responsible for any damages he may have suffered.
7. Plaintiff has unclean hands with respect to any equitable relief that might be sought.

8. This Defendant reserves the right to raise additional affirmative defenses as they may become known.

Respectfully submitted,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

s/ Christopher J. Johnson

Attorney for Judge Margaret Noe
27555 Executive Drive, Ste. 250
Farmington Hills, MI 48331
(248) 489-4100
cjohnson@jrsjlaw.com
(P32937)

DATED: August 15, 2017

RELIANCE UPON JURY DEMAND

NOW COMES Defendant, the Honorable Margaret M.S. Noe, by and through her Attorneys, JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C. by CHRISTOPHER J. JOHNSON and hereby rely upon the Jury Demand previously filed in this matter.

Respectfully submitted,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

s/ Christopher J. Johnson

Attorney for Judge Margaret Noe
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(P32937)

DATED: August 15, 2017

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record; and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: [NONE]

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

s/ Christopher J. Johnson

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